

DEPARTMENT OF STATE REVENUE

04-20090550P.LOF

Letter of Findings Number: 09-0550P
Sales Tax
For Tax Year 2006

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ISSUE**I. Tax Administration–Negligence Penalty and Interest.**

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an out-of-state individual. Taxpayer protests the imposition of the ten percent negligence penalty and interest on the purchase of an All Terrain Vehicle ("ATV") in 2006 from an Indiana dealer. Taxpayer purchased the ATV but did not pay sales tax on the purchase, claiming that the ATV was exempt since it would be used on Taxpayer's farm. The Indiana Department of Revenue ("Department") sent an agricultural exemption questionnaire to Taxpayer, which Taxpayer completed and returned. The answers on the questionnaire enabled the Department to determine that the ATV was used in an exempt manner three (3) percent of the time and in a non-exempt manner ninety-seven (97) percent of the time. As a result of this determination, the Department issued proposed assessments for use tax on ninety-seven percent of the purchase price of the ATV, ten percent negligence penalty, and interest. Taxpayer protests the imposition of penalty and interest but did not request a hearing. The Letter of Findings was written based on the materials in the file. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty and Interest.**DISCUSSION**

Taxpayer protests the imposition of ten percent negligence penalty and interest on the purchase of an ATV. Taxpayer states that he did not know that the ATV would be subject to sales or use tax. Taxpayer further states that he would have either paid sales tax at the time of purchase or that he would have purchased the ATV in his home state. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty and interest.

The agricultural exemption is found at IC § 6-2.5-5-2, which states:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

Next, the Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

- (3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added.)

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay

a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer used the ATV in an exempt manner three percent of the time and in a non-exempt manner ninety-seven percent of the time. A review of the paperwork which Taxpayer filled out at the time of purchase shows that one of those items signed by Taxpayer is a written explanation that all ATVs are not farm exempt. Therefore, in addition to the general standard that all taxpayers are required to know and follow Indiana's tax statutes and regulations, in this case Taxpayer was specifically on notice that the ATV in question might not be wholly exempt from sales and use tax. The Department cannot agree with Taxpayer that this constitutes reasonable cause, as provided by [45 IAC 15-11-2\(c\)](#). Ignorance of the listed tax laws and regulations is treated as negligence, as provided by [45 IAC 15-11-2\(b\)](#). As provided by IC § 6-8.1-10-1(e), the Department may not waive interest. Therefore, penalty and interest were properly imposed.

FINDING

Taxpayer's protest is denied.

Posted: 11/25/2009 by Legislative Services Agency

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